

FILED
2013 JUN 28 P 2:20
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Handwritten signature]

JSC

Jordan L. Lurie (SBN 130013)
Jordan.Lurie@capstonelawyers.com
David L. Cheng (SBN 240926)
David.Cheng@capstonelawyers.com
Tarek H. Zohdy (SBN 247775)
Tarek.Zohdy@capstonelawyers.com
Cody R. Padgett (SBN 275553)
Cody.Padgett@capstonelawyers.com
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Jean MacDonald

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 13 2988

JEAN MACDONALD, individually,
and on behalf of a class of similarly
situated individuals,

Plaintiff,

v.

FORD MOTOR COMPANY,
Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR:

- (1) Violations of California Consumer Legal Remedies Act
- (2) Violations of Unfair Competition Law
- (3) Breach of Implied Warranty pursuant to Song-Beverly Consumer Warranty Act
- (4) Violation of the Magnuson-Moss Warranty Act

DEMAND FOR JURY TRIAL

FILED BY FAX

1 1. Plaintiff Jean MacDonald ("Plaintiff") brings this action for herself
2 and on behalf all persons in the United States who purchased or leased any 2005
3 through 2008 Ford Escape Hybrid and/or 2006 through 2008 Mercury Mariner
4 vehicles (collectively, "Class Vehicles") designed manufactured, marketed,
5 distributed, sold, warranted and serviced by Ford Motor Company ("Ford" or
6 "Defendant"). Plaintiff alleges as follows upon personal knowledge as to herself
7 and her own acts and experiences, and, as to all other matters, upon information
8 and belief, including investigation conducted by her attorneys.

9 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

10 2. This case concerns a defective coolant pump equipped within the
11 Class Vehicle's Motor Electronic Cooling System (MECS) that causes the Class
12 Vehicles to unexpectedly shut down, often at highway speeds. The defect is
13 widespread, unreasonable and unsafe to purchasers of the Class Vehicles. It
14 potentially endangers not only the driver and passengers of the vehicle, but also
15 other drivers on the road and pedestrians on the street.

16 3. On information and belief, Ford designed the Class Vehicles' MECS
17 coolant system as a nascent effort to design and incorporate hybrid technology
18 into their fleet of vehicles. Theoretically, such a coolant system should, at the
19 very least, function in a way that the vehicle could operate safely and in a
20 manner intended for all automobiles. In practice, however, Ford's Motor
21 Electronics Cooling System has been plagued by numerous problems and safety
22 hazards.

23 4. This is because the MECS coolant pump contains one or more
24 design and/or manufacturing defects that causes, among other problems, the
25 vehicle to unexpectedly shut down and results in premature failure (the "Coolant
26 Pump Defect").

27 5. The Coolant Pump Defect causes unsafe conditions, including, but
28 not limited to, an abrupt loss of acceleration, inability to maneuver the vehicle

1 due to reduced speed and, in certain cases, complete vehicle failure. These
2 conditions present a safety hazard because they severely affect the driver's
3 ability to control the car's speed, acceleration, and deceleration. For example,
4 these conditions can make it difficult for a driver to safely navigate through
5 traffic and pull over. Even more troubling, the Coolant Pump Defect can cause
6 the vehicle to fail entirely, thus leaving the driver stranded in the middle of the
7 road if the shoulder cannot be reached.

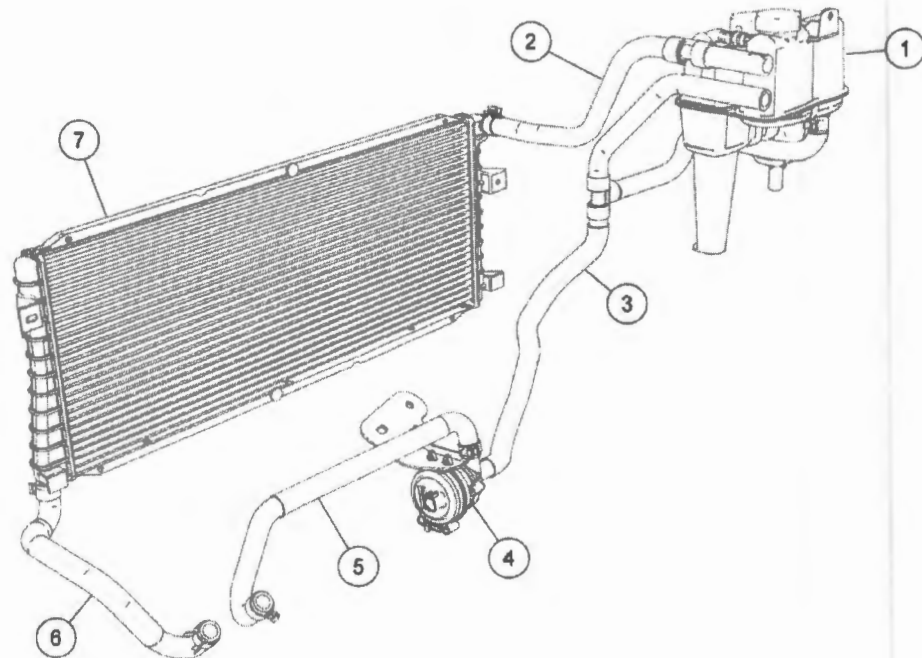
8 6. Ford was the first American car manufacturer to design and release
9 a Hybrid crossover vehicle in 2004 when it released the Ford Escape Hybrid, and
10 later its Mercury Mariner twin (hereinafter collectively referred to as "Escape
11 Hybrid").

12 7. Generally, crossover vehicles are larger than typical sedans, offer
13 more passenger space, engine power and towing capacity. Due to their larger
14 size, they require more engine and transmission power.

15 8. Each Escape Hybrid is equipped with two different engines that
16 work in tandem. The first is a conventional 2.3 liter, four cylinder gasoline
17 powered internal combustion engine. The second is a sophisticated 65-kw
18 electric traction motor that is powered, in part, by a 330-volt nickel-metal
19 hydride high voltage storage battery. The electric motor is utilized in two
20 situations, the first being when the vehicle begins moving from a stationary
21 point. The second is when the vehicle is operating at freeway speeds. This is,
22 in part, due to the increased power required to move the heavily weighted
23 crossover from a standstill and at higher speeds.

24 9. Given the heat generated by the Electronically Controlled
25 Continuously Variable Transmission (eCVT) and Hybrid Electric Vehicle (HEV)
26 DC/DC Converter, independent cooling is required to maintain a normal
27 operating temperature. Recognizing this issue, Ford designed and integrated a
28 temperature control system dubbed the MECS into the Class Vehicles. The

MECS consists of a degas bottle, outlet hose, degas bottle-to-pump hose, coolant pump-to-transaxle hose, radiator and coolant pump. The MECS coolant pump transfers heat generated by the eCVT and the HEV DC/DC Converter to the atmosphere. The illustration below, taken from a Ford Mechanics Repair Manual, shows the components within Ford's MECS, the coolant pump noted with the number four.

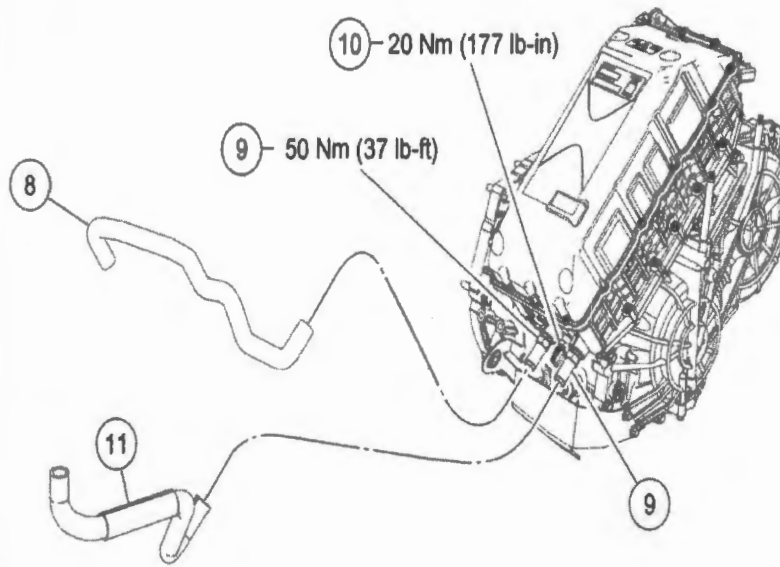


N0092656

10. The MECS coolant pump differs from other temperature relief systems in that it lacks a thermostat to gauge the temperature of the system. As such, it is always in an "ON" position when the vehicle ignition is enabled.

11. Summarily, the Motor Electronic Coolant System is designed to take coolant from the degas bottle to the MECS coolant pump. The MECS coolant pump pushes coolant through to the eCVT, lowering its temperature in the process. Coolant is then rerouted from the eCVT back to the MECS, entering into the MECS radiator and then back out, where the coolant ultimately makes its way back to the degas bottle.

12. The following diagram, taken from a Ford Mechanic's Repair Manual, demonstrates how coolant travels from MECS, beginning with the MECS outlet hose (Item 8) to the Transaxle/Transmission and back to MECS with the Transaxle-to-Radiator hose (Item 11).



13. Ford owners in surprising numbers have reported multiple episodes of the Coolant Pump Defect to their dealers and to the National Highway Traffic Safety Administration ("NHTSA"). Below is a typical example:

[2007 FORD ESCAPE HYBRID] I WAS TRAVELING NORTHBOUND ON I-95 IN MARYLAND, ABOUT 10 MILES SOUTH OF ELKTON. WHILE DRIVING IN THE SECOND FROM THE RIGHT LANE, IN HEAVY TRAFFIC JUST AFTER DARK, THE ENGINE COMPLETELY SHUT DOWN, WITH NO WARNING. MY INFORMATION SCREEN SAID "HYBRID SYSTEM FAILURE, PULL OVER IMMEDIATELY." I HAD NO POWER OF ANY KIND, HAD TO NAVIGATE HEAVY TRAFFIC AT HIGH SPEEDS, AND PULL OVER TO THE SHOULDER. IT WAS VERY DIFFICULT AND VERY DANGEROUS TO NAVIGATE. AFTER SITTING ON THE SHOULDER FOR SEVERAL MINUTES, THE CAR FINALLY STARTED, AND I WAS ABLE TO CONTINUE ON FOR A FEW MILES BEFORE IT HAPPENED AGAIN. AT LEAST I WAS IN THE RIGHT LANE THIS TIME. I AGAIN WAITED, AND ONCE AGAIN

1 THE ENGINE STARTED. I PULLED OFF AT THE
2 ELKTON EXIT, AND SPENT THE NIGHT AT A
3 LOCAL HOTEL. THE NEXT MORNING, I CALLED
4 THE LOCAL FORD DEALER, AND WAS TOLD
5 THAT, SINCE I WAS NOT A REGULAR
6 CUSTOMER, THEY COULD NOT HELP ME FOR
7 TWO DAYS. AFTER TOWING THE CAR TO MY
8 HOME DEALER, ABOUT 75 MILES, I WAS
9 INFORMED THAT IT WAS A WATER PUMP
10 FAILURE, NOT A HYBRID SYSTEM FAILURE,
11 AND THEREFORE NOT COVERED BY THE
12 WARRANTY. THIS SEEMED CURIOUS TO ME AS
13 THERE WAS NO INDICATION THAT THE
14 ENGINE WAS OVERHEATING, AND THE CAR
15 ITSELF INDICATED THAT THERE WAS A
16 HYBRID SYSTEM FAILURE. WHY WOULD THEY
17 DESIGN A VEHICLE TO COMPLETELY SHUT
18 DOWN, WITH NO WARNING. I CAN NOT
19 IMAGINE THE PANIC THIS MAY HAVE CAUSED
20 WITH A LESS EXPERIENCED DRIVER. THIS HAD
21 DISASTER WRITTEN ALL OVER IT. FURTHER, I
22 DO NOT UNDERSTAND WHY THIS WAS NOT A
23 WARRANTY ISSUE. THE HYBRID SYSTEM IS
24 SUPPOSEDLY WARRANTED FOR 100,000 MILES.
25 THE SYSTEM SHOULD BE DESIGNED TO WARN
26 THE DRIVER THAT A PROBLEM IS IMMINENT,
27 AND THE ENGINE WILL SHUT OFF IN A SHORT
28 PERIOD OF TIME. AS DESIGNED, THIS IS A
TERRIBLE AND DANGEROUS WARNING
SYSTEM, AND THE WARRANTY SERVICE FROM
FORD IS VAGUE AND AWFUL. *TR *National
Highway Traffic Safety Administration.* [http://www-
odi.nhtsa.dot.gov/owners/SearchResults.action](http://www-odi.nhtsa.dot.gov/owners/SearchResults.action) (March
26, 2012)

19 14. On information and belief, the Coolant Pump Defect also causes
20 premature wear to the transaxle due to overheating, which results in transaxle
21 failure and requires expensive repairs.

22 15. Beginning as early as 2005, Defendant knew or should have known
23 that the Class Vehicles and the MECS coolant pump contain one or more design
24 and/or manufacturing defects that negatively affect drivability and present safety
25 hazards.

26 16. Plaintiff is informed and believes, and on that basis alleges that
27 Defendant knew or should have known that the Class Vehicles are defective and
28 not fit for their intended purpose of providing consumers with safe and reliable

1 transportation. Nevertheless, Defendant actively concealed and failed to disclose
2 this defect from Plaintiff and class members at the time of purchase or lease and
3 thereafter.

4 17. As a result of the Coolant Pump Defect, as early as 2005, Ford
5 issued a Technical Service Bulletin ("TSB") to its dealers in the United States
6 acknowledging defects in the MECS coolant pump. Ford's TSB from 2005,
7 titled "Electric Motor Temperature Indicator Lamp On – Possible DTCS P0A2F,
8 P0A3C, P0A3E, P0A7C," stated that "Some 2005 Escape Hybrid vehicles built
9 between 8/2/2004 and 1/21/2005 may exhibit a red Electric Motor Temperature
10 lamp on, and/or diagnostic trouble codes (DTCs) P0A2F, P0A3C, P0A3C,
11 P0A3E, P0A7C. The vehicle may exhibit a loss of performance. *This may be*
12 *due to the motor electronics coolant pump (MECP) being inoperative.*"
13 (emphasis added).

14 18. Since that Technical Service Bulletin, Ford has issued at least two
15 more Bulletins concerning the MECS coolant pump that affect all Class
16 Vehicles.

17 19. Because Ford will not notify Class Members that the coolant pump
18 is defective, Plaintiff and Class Members (as well as members of the general
19 public) are subjected to dangerous driving conditions that often occur without
20 warning.

21 20. Defendant knew about and concealed the Coolant Pump Defect
22 present in every Class Vehicle, along with the attendant dangerous safety and
23 driveability problems, from Plaintiff and Class Members, at the time of sale,
24 lease, and repair and thereafter. In fact, instead of repairing the defects in the
25 MECS coolant system, Ford either refused to acknowledge their existence, or
26 performed ineffectual repairs that simply masked the defect.

27 21. If Plaintiff and the Class Members knew about these defects at the
28 time of sale or lease, Plaintiff and Class Members would not have purchased or

1 leased the Class Vehicles or would have paid less for them.

2 22. As a result of their reliance on Defendant's omissions and/or
3 misrepresentations, owners and/or lessees of the Class Vehicles suffered an
4 ascertainable loss of money, property, and/or value of their Class Vehicles,
5 including, but not limited to, out of pocket costs for the MECS coolant pump,
6 pump assembly, corresponding hoses, MECS radiator and dealership labor fees.
7 Additionally, as a result of the Coolant Pump Defect, Plaintiff and the Class
8 Members were harmed and suffered actual damages in that the Class Vehicles'
9 are substantially certain to fail before their expected useful life has run.

10 PARTIES

11 Plaintiff JEAN MACDONALD

12 23. Plaintiff Jean MacDonald is a California citizen who resides in
13 Antioch, California. In or around March 11, 2007, Plaintiff purchased a new
14 2007 Ford Escape Hybrid from Walnut Creek Ford in Walnut Creek, California.
15 Plaintiff's vehicle was manufactured, sold, distributed, advertised, marketed and
16 warranted by Defendant, and bears the Vehicle Identification Number
17 1FMYU49H07KB53401.

18 24. Plaintiff acquired her vehicle primarily for personal, family, or
19 household use.

20 25. In or around December 29, 2012, at approximately 43,146 miles,
21 Plaintiff was driving her Escape Hybrid on a freeway when the "Stop Safely
22 Now" light illuminated and it lost power. Plaintiff navigated the powerless
23 vehicle through freeway traffic to the shoulder of the highway. Plaintiff then had
24 the vehicle towed to a nearby Chevrolet dealership. That Chevrolet dealership
25 contacted a nearby Ford dealership who, over the telephone, diagnosed the issue
26 as the MECS coolant pump. After waiting an hour, Plaintiff successfully
27 restarted her vehicle. Plaintiff immediately took it to Future Ford of Clovis.
28 Plaintiff's repair order states "GOT MESSAGE TO PULL OVER SAFELY,

1 LOST THROTTLE AND POWER TURNED OFF.” In that same repair order,
2 the mechanics at the Ford authorized dealership stated “FOUND
3 MALFUNCTION WITH THE MOTOR ELECTRONICS COOLING PUMP.
4 NEEDS PUMP REPLACED AND RETESTED”. The MECS coolant pump
5 (ID# 5M6Z*8C419*A) was replaced, at a total cost of \$767.58.

6 26. A factor in the purchase of Plaintiff’s vehicle was passenger safety.
7 Prior to purchasing her vehicle, Plaintiff took time and effort to compare the
8 Escape Hybrid with other similar and competing vehicles.

9 27. At all times, Plaintiff, like all Class Members, has driven her vehicle
10 in a foreseeable manner and in the manner in which it was intended to be used.

11 **Defendant**

12 28. Defendant Ford Motor Company is a corporation organized and in
13 existence under the laws of the State of Delaware and registered with the
14 California Department of Corporations to conduct business in California. Ford
15 Motor Company’s Corporate Headquarters is located in Dearborn, Michigan.
16 Ford Motor Company designs and manufactures motor vehicles, parts, and other
17 products for sale in the United States and throughout the world. Ford Motor
18 Company is the warrantor and distributor of the Class Vehicles in the United
19 States.

20 29. At all relevant times, Defendant was and is engaged in the business
21 of designing, manufacturing, constructing, assembling, marketing, distributing,
22 and selling automobiles and motor vehicle components in California and
23 throughout the United States of America.

24 **JURISDICTION**

25 30. This is a class action.

26 31. Plaintiff and at least some other members of the Proposed Class are
27 citizens of states different from the home state of Defendant.

28 32. On information and belief, aggregate claims of individual Class

1 Members exceed \$5,000,000.00 in value, exclusive of interest and costs.

2 33. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

3 **VENUE**

4 34. Ford, through its business of distributing, selling, and leasing the
5 Class Vehicles, has established sufficient contacts in this district such that
6 personal jurisdiction is appropriate. Defendant is deemed to reside in this district
7 pursuant to 28 U.S.C. § 1391(a).

8 35. In addition, a substantial part of the events or omissions giving rise
9 to these claims and a substantial part of the property that is the subject of this
10 action are in this district. In addition, Plaintiff's Declaration, as required under
11 California Civil Code section 1780(d) but not pursuant to *Erie* and federal
12 procedural rules, which reflects that a substantial part of the events or omissions
13 giving rise to the claims alleged herein occurred, or a substantial part of property
14 that is the subject of this action, is situated in Los Angeles County, California.
15 Plaintiff's Declaration regarding venue is attached as Exhibit A.

16 36. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

17 **Consumer Complaints**

18 37. The Coolant Pump Defect causes unsafe conditions in the Class
19 Vehicles, including but not limited to abrupt losses of acceleration, inability to
20 maneuver the vehicle due to reduced speed, slowed steering, and, in certain
21 cases, complete vehicle failure. These conditions present a safety hazard
22 because they severely affect the driver's ability to control the Class Vehicle's
23 speed, steering, acceleration, and deceleration.

24 38. Even more troubling, the defect generally manifests at freeway
25 speeds, and poses an unreasonable safety risk due to the inherent dangers of
26 travelling at high speeds. As a result, Plaintiff and Class Members have
27 experienced their cars simply shutting down while operating at freeway speeds,
28 quite often while surrounded by other drivers driving at similar speeds.

39. On information and belief, thousands of purchasers and lessees of the Class Vehicles have experienced problems with their MECS coolant pumps. Complaints filed by consumers with the National Highway Traffic Safety Administration ("NHTSA") demonstrate that the defect is widespread and dangerous and that it manifests without warning. The complaints also indicate Defendant's awareness of the problems with the coolant pump and how potentially dangerous the defective condition is for consumers. The following are some safety complaints relating to the Coolant Pump Defect (spelling and grammar mistakes remain as found in the original) (Safecar.gov, *Search for Complaints* (March 26, 2013), <http://www-odi.nhtsa.dot.gov/complaints/>):

NHTSA Complaints:

- a. [2008 FORD ESCAPE HYBRID] I WAS TRAVELING THROUGH NYC ON RT 95 DURING RUSH HOUR, BUMPER TO BUMPER TRAFFIC. ALL 3 LANES WERE TRAVELING AT 65 MPH WITH NO BREAKDOWN LANE DUE TO CONSTRUCTION IN THE AREA. THE CAR FOR NO APPARENT REASON DISPLAYED THE "STOP SAFELY NOW" MESSAGE AND THE ENGINE DIED. BY SOME MIRACLE THE JERSEY BARRIERS BLOCKING THE BREAKDOWN LANE OPENED UP FOR ABOUT 100 FT AND I WAS ABLE TO PULL OVER. THE CAR LOSES ALL POWER WHEN THE STOP SAFELY NOW MESSAGE APPEARS. THIS IS A HAZARD AND THIS CAR SHOULD BE RECALLED FOR THIS PROBLEM. IT TURNED OUT THE COOLING PUMP NEEDED TO BE REPLACED. NO CAR SHOULD SIMPLY SHUT OFF WHEN DRIVING. IT CREATES AN EXTREMELY DANGEROUS SITUATION. I HAD 18 WHEELERS AND A STREAM OF CARS BEHIND ME AND HAD THE BREAKDOWN LANE NOT BEEN AVAILABLE, THERE WOULD HAVE BEEN A MULTIPLE CAR CRASH WITH POTENTIAL DEATHS. IT IS HARD TO BELIEVE THAT THERE HAVE BEEN NO ACCIDENTS DUE TO THIS PROBLEM. THIS CAR IS UNSAFE TO DRIVE BECAUSE YOU HAVE NO IDEA WHEN THE ENGINE WILL SHUT OFF. THE CAR NEEDS TO BE REDESIGNED SO THAT THE STOP SAFELY NOW MESSAGE NEVER SHUTS DOWN THE ENGINE. *TR
- b. [2008 FORD ESCAPE HYBRID] I WAS TRAVELING ON THE EXPRESSWAY IN THE LEFT HAND LANE DOING ABOUT 70 MPH WHEN THE ENGINE SHUTDOWN AND A STOP NOW SAFELY MESSAGE APPEARED ON DASHBOARD. I WAS ABLE TO PULL OVER TURNED OFF THE VEHICLE WAS ABLE TO RESTART AND CONTINUE

TO MY DESTINATION. THIS AGAIN HAPPENED ON THE WAY HOME THE SAME DAY THERE WAS NO PROBLEM FOUND AT THE TIMES I PULLED OVER AND BOTH TIMES WAS ABLE TO CONTINUE. I HAD NO ABILITY TO ACCELERATE AND FORTUNATELY WAS ABLE TO PULL OVER, THIS WAS A SCARY. *KB

c. [2008 FORD ESCAPE HYBRID] MY 2008 FORD ESCAPE HYBRID (53,000 MILES) IS DANGEROUS TO DRIVE. WHILE DRIVING 70 MPH ON I-5 I HEAR A POPPING SOUND AND SUDDENLY ALL ABILITY TO ACCELERATE IS LOST. A RED EXCLAMATION POINT WITHIN A TRIANGLE APPEARS ON THE CONTROL PANEL AND A SINCERELY BIZARRE MESSAGE DISPLAYS ITSELF: "PLEASE PULL OVER SAFELY". THIS IS QUITE THE CHALLENGE WITH 18 WHEELERS BEHIND ME, TO THE SIDE OF ME, AND OTHER CARS ALL AROUND. WITH QUICK REFLEXES, I AM ABLE TO GET OVER TWO LANES AND SLOWLY (I THINK ONLY THE ELECTRIC ENGINE IS WORKING, NO GAS) DRIVE OFF THE NEXT EXIT. SITTING IN THE CAR, I AM IN SHOCK. WHAT JUST HAPPENED? WILL IT HAPPEN AGAIN? BECAUSE WE ARE ON OUR WAY HOME FROM OREGON TO THE EAST BAY AREA IN CA, WE ATTEMPT TO GET BACK ON THE FREEWAY AND MAKE OUR WAY SOUTH. WITHIN 40 MINUTES THE SAME FAILURE HAPPENS AGAIN, ONLY THIS TIME THERE ISN'T AN EXIT RAMP. WE ARE ON THE SIDE OF AN BUSY TWO-LANE SOUTHERN TRAVELING FREEWAY. ONCE SAFELY TO THE SIDE, THE CAR RESTARTS AND APPEARS TO BE FUNCTIONING PROPERLY. NOW I AM AFRAID TO DRIVE IT, BUT WANT TO GET HOME. I DECIDE TO GO A LITTLE UNDER THE SPEED LIMIT (A HAZARD) AND STAY IN THE LEFT LANE. AFTER THE CAR FAILS AND TELLS ME TO "PULL OVER SAFELY NOW" FOR THE 5TH TIME, I DECIDE I CAN'T TAKE IT ANYMORE. WE CALL FORD'S ROADSIDE ASSISTANCE NUMBER AND WAIT TWO HOURS (YES! TWO HOURS!) FOR A TOW TRUCK, ONLY TO BE CALLED BACK BY AN AUTOMATED DISPATCH THAT GIVES US THE NAME OF A DIFFERENT TOWING SERVICE THAT ESTIMATES ITS ARRIVAL TIME IN 2 HOURS (THE FIRST COMPANY APPARENTLY HAD TO GO TO A POLICE EMERGENCY TOW, BUT I BELIEVE THEY DIDN'T AGREE ON A DECENT WAGE FOR THE SERVICE). NOT WANTING TO WAIT 2 MORE HOURS, I ATTEMPT TO DRIVE AGAIN. WITHIN 10 MINUTES, THE CAR FAILS AND WE ARE LUCKY ENOUGH TO GLIDE TO AN OFF RAMP AND INTO A GAS STATION PARKING LOT. THANK GOODNESS WE DIDN'T GET ANY FURTHER; THE NEXT STRETCH OF FREEWAY HAD NO SHOULDER AT ALL AND THE NEXT PART WAS A LONG BRIDGE. CAR IS NOW AT DEALER WAITING FOR MON APPT. *TR

d. [2008 FORD ESCAPE HYBRID] I WAS DRIVING ON THE FREEWAY AT 71-73MPH WHEN A RED TRIANGLE WITH

1 AN EXCLAMATION MARK APPEARED, MY ENGINE SHUT
2 OFF, AND A "STOP VEHICLE SAFELY" MESSAGE CAME
3 ACROSS THE DASH. THIS HAPPENED 3 TIMES IN ONE
4 HOUR. EACH TIME, THE ENGINE SHUT OFF, AND I HAD
5 TO PULL OVER. THE CAR WOULD START BACK UP
6 PERFECTLY. I WAS ABLE TO GET THE CAR TO A SHOP
7 BY KEEPING IT UNDER 60MPH ON THE FREEWAY. 3. THE
8 SHOP SAYS I NEED A MOTOR ELECTRONICS COOLING
9 PUMP AND A PCM REPROGRAMMING. *TT

10 e. [2007 FORD ESCAPE HYBRID] WHEN THERE IS A FAULT
11 WITH THE ELECTRICAL HYBRID BATTERY SYSTEM,
12 THE VEHICLE CUTS POWER COMPLETELY TO THE
13 ENGINE. IT SIMPLY FLASHES A "STOP SAFELY NOW"
14 MESSAGE. HAVING TO POTENTIALLY CUT ACROSS 4
15 LANES OF FREEWAY TRAFFIC WITHOUT POWER IS
16 VERY DANGEROUS. I NEARLY HAD AN ACCIDENT
17 SEVERAL TIMES DUE TO THIS. IF THE HYBRID SYSTEM
18 HAS A FAULT, IT SHOULD STILL KEEP THE GAS ENGINE
19 OPERATIONAL. ADDITIONALLY, THE FAULT IS VERY
20 INTERMITTENT, AND MY FORD FACTORY MECHANIC
21 COULD NOT TRACK DOWN ANY DEFINITE CAUSE.

22 f. [2007 FORD ESCAPE HYBRID] I WAS TRAVELING
23 NORTHBOUND ON I-95 IN MARYLAND, ABOUT 10 MILES
24 SOUTH OF ELKTON. WHILE DRIVING IN THE SECOND
25 FROM THE RIGHT LANE, IN HEAVY TRAFFIC JUST
26 AFTER DARK, THE ENGINE COMPLETELY SHUT DOWN,
27 WITH NO WARNING. MY INFORMATION SCREEN SAID
28 "HYBRID SYSTEM FAILURE, PULL OVER
IMMEDIATELY." I HAD NO POWER OF ANY KIND, HAD
TO NAVIGATE HEAVY TRAFFIC AT HIGH SPEEDS, AND
PULL OVER TO THE SHOULDER. IT WAS VERY
DIFFICULT AND VERY DANGEROUS TO NAVIGATE.
AFTER SITTING ON THE SHOULDER FOR SEVERAL
MINUTES, THE CAR FINALLY STARTED, AND I WAS
ABLE TO CONTINUE ON FOR A FEW MILES BEFORE IT
HAPPENED AGAIN. AT LEAST I WAS IN THE RIGHT
LANE THIS TIME. I AGAIN WAITED, AND ONCE AGAIN
THE ENGINE STARTED. I PULLED OFF AT THE ELKTON
EXIT, AND SPENT THE NIGHT AT A LOCAL HOTEL. THE
NEXT MORNING, I CALLED THE LOCAL FORD DEALER,
AND WAS TOLD THAT, SINCE I WAS NOT A REGULAR
CUSTOMER, THEY COULD NOT HELP ME FOR TWO
DAYS. AFTER TOWING THE CAR TO MY HOME DEALER,
ABOUT 75 MILES, I WAS INFORMED THAT IT WAS A
WATER PUMP FAILURE, NOT A HYBRID SYSTEM
FAILURE, AND THEREFORE NOT COVERED BY THE
WARRANTY. THIS SEEMED CURIOUS TO ME AS THERE
WAS NO INDICATION THAT THE ENGINE WAS
OVERHEATING, AND THE CAR ITSELF INDICATED THAT
THERE WAS A HYBRID SYSTEM FAILURE. WHY WOULD
THEY DESIGN A VEHICLE TO COMPLETELY SHUT
DOWN, WITH NO WARNING. I CAN NOT IMAGINE THE
PANIC THIS MAY HAVE CAUSED WITH A LESS

1 EXPERIENCED DRIVER. THIS HAD DISASTER WRITTEN
 2 ALL OVER IT. FURTHER, I DO NOT UNDERSTAND WHY
 3 THIS WAS NOT A WARRANTY ISSUE. THE HYBRID
 4 SYSTEM IS SUPPOSEDLY WARRANTED FOR 100,000
 5 MILES. THE SYSTEM SHOULD BE DESIGNED TO WARN
 6 THE DRIVER THAT A PROBLEM IS IMMINENT, AND THE
 7 ENGINE WILL SHUT OFF IN A SHORT PERIOD OF TIME.
 8 AS DESIGNED, THIS IS A TERRIBLE AND DANGEROUS
 9 WARNING SYSTEM, AND THE WARRANTY SERVICE
 10 FROM FORD IS VAGUE AND AWFUL. *TR

11 g. [2007 FORD ESCAPE HYBRID] I WAS DRIVING ON THE
 12 FREEWAY WHEN THE ENGINE SHUT OFF AND 'MASTER
 13 VEHICLE ELECTRICAL HAZARD WARNING LAMP'
 14 CAME ON. FORTUNATELY I ONLY HAD TO CROSS ONE
 15 LANE IN MODEST TRAFFIC. THE OWNER'S MANUAL
 16 INSTRUCTIONS STATE 'STOP THE VEHICLE, SHIFT TO
 17 PARK, TURN THE KEY TO OFF POSITION AND ATTEMPT
 18 TO RESTART THE VEHICLE. IF THE FAULT REMAINS,
 19 THE VEHICLE MAY REQUIRE RESETTING THE SHUT-OFF
 20 SWITCHES.' FOLLOWING THE INSTRUCTIONS, I WAS
 21 ABLE TO RESTART THE VEHICLE AND CONTINUE
 22 DRIVING WITHOUT RESETTING ANY SWITCHES. THE
 23 WARNING LIGHT REMAINED OFF AND HAS NOT COME
 24 BACK ON AGAIN. I HAVE SCHEDULED AN APPOINTMENT
 25 TO TAKE THE VEHICLE TO A DEALER. IN THE MEAN
 26 TIME I HAVE SEARCHED THE WEB FOR DRIVERS WITH
 27 SIMILAR EXPERIENCES AND HAVE COME ACROSS
 28 QUITE A FEW. I PERSONALLY DO NOT FEEL SAFE
 DRIVING A VEHICLE THAT CAN SHUT OFF WITHOUT
 WARNING, ESPECIALLY ON A BUSY HIGHWAY. THE
 FACT THAT FORD HAS INSTRUCTIONS IN THE OWNERS
 MANUAL FOR 'RESETTING THE FUEL PUMP/HIGH
 VOLTAGE SHUT OFF SWITCHES' IS ALARMING IN
 ITSELF ESSENTIALLY I CAN BE TRAVELING IN URBAN
 RUSH HOUR TRAFFIC AND A COMPUTER CAN DECIDE
 TO SHUT OFF THE ENGINE. I URGE YOU TO REQUIRE
 FORD TO ADDRESS THIS DEFECT. *TT

h. [2006 FORD ESCAPE HYBRID] DRIVING ON THE
 INTERSTATE AND THE CAR SHUTS DOWN DISPLAYING
 A STOP SAFELY NOW ERROR.... APPARENTLY A FAULTY
 PUMP. THE SAME PUMP THAT WE'VE ALREADY
 REPLACED 3 TIMES..... NOT ONLY IS THIS ANNOYING
 BUT IT'S A HUGE SAFETY PROBLEM. THE VEHICLE
 LOSES ALL POWER! *TR

i. [2006 FORD ESCAPE HYBRID] I WAS DRIVING DOWN
 THE HIGHWAY IN MY 2006 FORD ESCAPE HYBRID
 GOING ABOUT 65 MPH AND STARTED TO ACCELERATE
 TO PASS ANOTHER VEHICLE AND MY CAR SUDDENLY
 SHUT DOWN. IT WAS AS IF I SLAMMED ON THE
 BRAKES. AND I COULD NOT PICK UP SPEED AFTER
 THAT. THERE WAS NO WARNING ON MY DASHBOARD
 ONLY THE DISPLAY SAYING TO "STOP SAFELY NOW". I

PULLED OVER AND LET THE CAR IDLE FOR A MINUTE. THERE WAS STILL NOT OTHER WARNING AND THE CAR WAS NOT MAKING ANY NOISES AND NO STEAM COMING FROM HOOD. I SHUT IT DOWN, WAITED A MINUTE, THEN RESTARTED IT. IT STARTED BACK UP FINE. NOTHING ON THE DISPLAY NOW AND STILL NOT MAKING ANY NOISE. I PULLED AHEAD A LITTLE TO SEE IF IT WOULD MOVE AND IT DID. I LET IT IDLE FOR ANOTHER MINUTE THEN PROCEEDED BACK ONTO HIGHWAY TO TRY TO GET HOME. I GOT UP TO ABOUT 40 MPH AND THE SAME EXACT THING HAPPENED. I PULLED BACK TO SIDE OF HIGHWAY AND CALLED AAA FOR A TOW TRUCK. WHEN THE TOW TRUCK CAME ABOUT 1 1/2 HOURS LATER, MY CAR WOULD NOT START AT ALL AT THAT POINT. TOWED IT TO A SHOP WHO THEN SAID THE CAR'S OIL WAS NOT READING ON THE DIPSTICK. I HAD MY OIL CHANGED IN MARCH BY A REPUTABLE COMPANY AND HAVE ALWAYS HAD MY OIL CHANGED CONSISTENTLY. THEY TOLD ME MY ENGINE WAS GONE AND I NEEDED A WHOLE NEW ONE. I THEN HAD MY CAR TOWED TO A FORD DEALERSHIP, WHERE I BOUGHT, IT FOR A SECOND OPINION AND HE SAID THE SAME THING THAT I NEEDED TO HAVE MY ENGINE REPLACED DUE TO INTERNAL ENGINE NOISE. THEY ALSO TOLD ME I NEEDED THE THROTTLE BODY AND COOLANT PUMP REPLACED. THEY ALSO SAID NO VISIBLE EXTERNAL OIL LEAKS AND NO INDICATION OF INTERNAL ENGINE USE SUCH AS "BLOW-BY". THEIR OVERALL ESTIMATE TO FIX MY CAR, INCLUDING A NEW ENGINE, IS \$8000.00. I NEVER HAD AT ANY POINT ANY INDICATION THAT SOMETHING WAS WRONG WITH MY CAR. NO NOISES, NO WARNING LIGHTS. I BOUGHT IT BRAND NEW. I CAN'T AFFORD REPAIRS OF THAT MAGNITUDE. I CALLED FORD AND THEY SAID THERE IS NOTHING THEY CAN DO. *TR

j. [2006 FORD ESCAPE HYBRID] 2006 FORD ESCAPE HYBRID, RIGHT AFTER THE WARNING "STOP SAFELY NOW", THE CAR SHUT DOWN RIGHT IN THE MIDDLE OF THE ROAD, AND IT HAPPENED THREE TIMES ON MY WAY HOME. AFTER WEB RESEARCH, IT IS QUITE COMMON FOR THE FORD ESCAPE HYBRID CARS. IT IS VERY DANGEROUS SINCE THERE IS NO TIME FOR YOU TO STOP SAFELY BEFORE THE CAR SHUT DOWN, NOT EVEN A 5 OR 10 SECONDS. THE DEALER CHECK IT OUT, IT WAS A WATER PUMP FAILURE CAUSED THIS, CALLED FORD, BUT FORD DENIED ANY ASSISTANCE. THE REPAIR COSTS MORE THAN \$600.00. THIS IS A SAFETY ISSUE AND IT IS NEED TO BE FIXED. WHO IS GOING TO DRIVE A CAR WHICH WILL SHUT DOWN IN THE MIDDLE OF THE ROAD WITHOUT ANY TIME TO RESPOND TO? *TR

k. [2006 FORD ESCAPE HYBRID] DRIVING MY FORD ESCAPE HYBRID ON I 5 WA STATE. WARNING LITE

1 CAME ON THAT SAID STOP SAFELY NOW AND MY
 2 ENGINE HAD STOPPED. I WAS IN THE LEFT LANE ON
 3 THE HIGHWAY AND HAD TO UNSAFELY MANEUVER 4
 4 LANES TO THE RIGHT WITHOUT THE ENGINE ON.. I
 5 READ MY MANUAL AND IT SAID TO TRY AND START,
 6 WHICH IT DID. 3 MILES LATER IT DID IT AGAIN. THIS
 7 WENT ON FOR 4 OR 5 MORE TIMES. I GOT OFF THE
 8 HIGHWAY AND LIMPED TO A FORD DEALER. THEY
 9 REPAIRED IT, IT AS A HYBRID COMPONENT COOLING
 10 PUMP. IT COST ME \$726.00. THEY WOULDN'T COVER IT. I
 11 VIEW THIS AS A SEVERE SAFETY PROBLEM. *TR

1 [2005 FORD ESCAPE HYBRID] THIS VEHICLE WILL GO
 2 INTO "FAIL-SAFE" MODE, WHICH SHUTS THE IC ENGINE
 3 OFF WHILE YOU'RE DRIVING AT HIGHWAY SPEEDS, IT
 4 HAPPENS VERY INTERMITTENTLY AND NOT IN ANY
 5 CONSISTENT PATTERN. ONCE IT HAPPENS, IT
 6 CONTINUES TO OCCUR UNLESS THE CAR COOLS OFF
 7 COMPLETELY. HAPPENS ONLY WHEN CAR IS USED FOR
 8 LONG TRIPS. MULTIPLE FAULT CODES SHOW UP ON
 9 THE COMPUTER, AND BASED ON THOSE FAULT CODES,
 10 I'VE HAD THE HYBRID COOLANT PUMP REPLACED, THE
 11 AIR FILTER FOR THE BATTERIES REPLACED, AND THE
 12 FANS THAT COOL THE BATTERY REPLACED. I'VE HAD
 13 MULTIPLE TRIPS TO BOTH FORD DEALERSHIP SERVICE
 14 AND EXCELLENT INDEPENDENT MECHANICS (WHO
 15 WERE BLOCKED ON THE FORD TECHNICAL WEBSITE,
 16 EVEN THOUGH THESE INDEPENDENT MECHANICS
 17 SUBSCRIBE, FROM FINISHING THEIR RESEARCH INTO
 18 REPAIR OPTIONS) WITH THE FINAL RESULTS THAT
 19 THEY CAN'T DO ANYTHING TO REPAIR IT. OTHER THAN
 20 THIS PROBLEM, IT'S A VERY NICE VEHICLE..... BUT, I'M
 21 VERY NERVOUS THAT THIS SHUT-DOWN WILL OCCUR
 22 IN FAST, HEAVY TRAFFIC WHERE I CANNOT GET TO
 23 THE SIDE OF THE ROAD SAFELY AND CAUSE A
 24 HORRIBLE ACCIDENT AND LOSS OF LIFE..... INCLUDING
 25 MY OWN OR MY FAMILY. I CANNOT KEEP THIS
 26 VEHICLE LONGER..... BUT, IF I TRADE IT OFF.... IT'S
 27 ONLY GOING TO BE SOMEONE ELSE'S PROBLEM. THIS
 28 SHOULD HAVE BEEN A RECALL ISSUE FOR FORD. GO
 ONLINE, AND YOU CAN FIND MANY PEOPLE WITH THE
 SAME PROBLEM, SEVERAL OF WHICH HAVE HAD
 TERRIFYING EXPERIENCES WITH THIS PROBLEM.
 FORTUNATELY, MOST OF MY DRIVING WITH THIS
 VEHICLE IS ON 2-LANE STATE HIGHWAYS WHERE I CAN
 PULL OFF WHEN THIS HAPPENS. IN THE MIDDLE OF 80-
 MPH LA TRAFFIC ON A 6 LANE FREEWAY..... IN THE
 MIDDLE LANE..... I SHUDDER TO THINK. I BOUGHT THIS
 VEHICLE IN DECEMBER, 2011, AND WILL BE GIVING
 SOMEONE ELSE THE PROBLEM SOON, AS I CANNOT
 CONTINUE TO SPEND MONEY ON A VEHICLE THAT NO
 ONE IS CAPABLE OF FIXING, AND I CANNOT KEEP IT
 WITH THIS PROBLEM. *TR

m. [2005 FORD ESCAPE HYBRID] AS DRIVING ON THE

HIGHWAY, THE ENGINE SUDDENLY SHUT DOWN, AND WAS ABLE TO DRIVE TOWARDS THE SHOULDER. AFTER 5 MINUTES, I WAS ABLE TO RESTART THE ENGINE. TEN MINUTES LATER, IT HAPPENED AGAIN, STILL DRIVING THE HIGHWAY @60 MPH. LUCKILY, NO CARS WERE BEHIND, AND I WAS ABLE TO MOVE TO THE SHOULDER WITHOUT INCIDENT. THE FOLLOWING MONDAY, IT HAPPENED AGAIN, THREE TIMES. CAR WAS TOWED TO THE DEALER, I WAS TOLD THEY HAVE HAD ANOTHER CAR THE SAME MORNING, WITH EXACTLY THE SAME PROBLEM. DIAGNOSTICS: NEED TO REPLACE BOTH HIGH VOLTAGE TRACTION BATTERY COOLING FANS AND TO REPLACE MOTOR ELECTRONICS COOLING PUMP. WHEN DEALER SEARCHED FOR PARTS, THEY COULD NOT FIND ANY IN MN, BECAUSE APPARENTLY ALL DEALERS WERE HAVING THE SAME PROBLEM. IT WOULD TAKE SEVERAL DAYS UNTIL THEY WOULD GET THE PART FROM CA. FORD IS NOT WILLING TO RECOGNIZE THEY HAVE A PROBLEM WITH THE ENGINE AND BATTERY COOLING SYSTEM, ALTHOUGH IT HAS HAPPENED SEVERAL TIMES. FORD EVEN ISSUED TWO TECHNICAL SERVICE BULLETINS (TSB 08-24-5 AND TSB 09-17-7) ADDRESSING BOTH ISSUES. IT IS A VERY SERIOUS SAFETY ISSUE, GIVEN THE ENGINE SUDDENLY SHUTS DOWN ON THE HIGHWAY, AND THE CAR NEEDS TO BE MOVED RIGHT AWAY TOWARDS THE SHOULDER. CAR COULD BE HIT FROM BEHIND FROM ONCOMING TRAFFIC, GIVEN THE SUDDEN SPEED CHANGE, AND COULD CAUSE FATALITIES. DON'T WANT TO HAVE FOR ANOTHER FIRESTONE - FORD EXPLORER FIASCO.

n [2006 MERCURY MARINER HYBRID] ON I-66W VEHICLE LOST ENGINE POWER AT HIGHWAY SPEED. DISPLAYED STOP SAFELY NOW AND MASTER VEHICLE ELECTRICAL HAZARD WARNING LAMP. THE INCIDENT WAS EXTREMELY HARROWING FOR THE DRIVER AS THE POWER CUTOFF WAS UNEXPECTED AND IMMEDIATE. COASTED TO SHOULDER. A RESTART, PER THE OWNER MANUAL, WAS ATTEMPTED BUT DID NOT WORK. TRANSPORTED ON FLATBED TO FORD DEALERSHIP. DEALERSHIP STATED HYBRID BATTERY HARNESS, HYBRID COOLING FANS, AND THROTTLE BODY NEEDED TO BE REPLACED AND PCM REPROGRAMMED FOR \$1900 TO ~~€€~~FIX ISSUE. OWNER REQUESTED A NEW 12V FRONT BATTERY AND WARNING CEASED. OWNER DECIDED TO DO SOME RESEARCH AND TEST DRIVE SHORT DISTANCES. ON 5/24 THE ENGINE CUT OFF IN AN OFFICE PARKING LOT. VEHICLE WAS ABLE TO BE RESTARTED AND GO 4 MILES BACK TO RESIDENCE AFTER THE CARPET COVERING THE HYBRID BATTERY WAS PULLED UP AND THE CABIN A/C TURNED TO HIGH IN AN EFFORT TO COOL THE BATTERY AREA (IT DID NOT FEEL HOT BUT THE OWNER BELIEVED IF A TEMP READING WAS THE CAUSE A FEW DEGREES COOLER MIGHT HELP). A

WEALTH OF INFO WAS FOUND INDICATING THIS WAS A KNOWN PROBLEM AND HAD MULTIPLE FORD TECHNICAL SERVICE BULLETINS ISSUED (09-18-6 SEP 09 HYBRID SYSTEMS - RED TRIANGLE ON/DTC P0A27 SETC). THE OWNER COMPILED A LIST OF 88 COMPLAINT NUMBERS ON THE NHTSA SITE THAT INDICATE SUBSTANTIALLY SIMILAR EXPERIENCES FROM 2005-2008 FORD ESCAPE HYBRID / MERCURY MARINER HYBRID OWNERS. BELIEVE ROOT CAUSE IS A DESIGN FLAW IN THE PCM S/W THAT REMOVES ENGINE POWER WHEN A MINOR DEVIATION FROM THE NOMINAL BATTERY TEMP RANGE IS SENSED. LIKELY CONTRIBUTING ISSUE IS A POORLY DESIGNED HYBRID BATTERY COOLING SYSTEM (BATTERY HARNESS, BATTERY COOLING FANS, MEC PUMP, BLEND DOOR, RELAYS). THE NHTSA IS URGED TO OPEN AN INVESTIGATION INTO THE STOP SAFELY NOW/MASTER VEHICLE ELECTRICAL HAZARD ENGINE SHUTDOWNS. VEHICLE IS NOT REPAIRED AND CAN BE MADE AVAILABLE FOR INSPECTION. *TR

Edmunds Internet Postings:

- a) I recently was (stranded out of town) due to a failure on the electric motor coolant pump. I was towing a small utility trailer along an old jeep trail, so I was in electric mode most of the time. The dealer service rep said that this had nothing to do with the problem, but I'm not convinced. The rep also said that this problem was on the Ford "hotline, " so it is happening to other vehicles. Anyone else have this problem? If not, be careful if you are off-road!

Also, a reply to Jim regarding the whine at low speeds. I hear it also. I think that it is nothing to worry about and just noise from the motor/generator spinning. Anyone else? (Edmunds, *Ford Escape Hybrid – Car Forums Edmunds* (accessed March 25, 2013), <http://townhall-talk.edmunds.com/direct/view/.ef0f4df/1179#MSG1179>)

- b) We had this problem yesterday in a 05 FEH. Started off as a High Motor Temperature light, followed by the Triangle of death and total shutdown in the middle of traffic. Upon lifting the hood could not smell a hot motor, both coolant reservoirs full and not hot to touch. Glad of second vehicle. The next day car started with no alarms present?

Who were these 4 clowns in Canada that could not help you? I need to book with a dealer in the Red Deer Alberta area to get this fixed. Was it the electronic coolant pump? (Edmunds, *Ford*

Escape Hybrid Engine Problems– Car Forums Edmunds (accessed March 26, 2013), <http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/62#MSG62>)

- c) I was on the highway when my car shut off without warning. I was 4 hours from home so found a dealer and it has been 2 weeks without my car, they are waiting on a part under warranty for the electronic water pump. I had to rent a car which has cost me 650,00 and adding up daily. Ford won't reimburse me for the rental and when my car does get fixed I have to take off of work and drive 4 hours away to pick up my car. I have LOVED this car for 2 years but this has really made me think it is not a reliable vehicle. anyone else have this issue and how long did it take to get the part?. (*Edmunds, Ford Escape Hybrid Engine Problems– Car Forums Edmunds* (accessed March 26, 2013), <http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/63#MSG63>)
- d) Mine failed 5 times then I did not have problem for 600 miles. Parked it in my garage and called my Ford dealer to order the part and I was informed that I was number 800 thats right 800 on the bakcorder list. That was two weeks ago and they still do not have it. I emailed Ford about this and they had the dealer contact me. Which did no good as I had already spoke to them. So having Ford belly up looks like it will not happen. NUMBER "800" ON THE BSCORDER LIST.. (*Edmunds, Ford Escape Hybrid Engine Problems– Car Forums Edmunds* (accessed March 26, 2013), <http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/71#MSG71>)
- e) I just ran into the same problem. It cost me \$700 to get fixed at the Ford dealership. They charged me \$100 just to diagnose the problem, and \$600 to fix it. The electrical cooling pump had to be replaced. I no longer feel safe driving this car and am also contacting Ford as the computer coding that makes the car shut off while driving is flawed and extremely dangerous. I can't believe there has been no recall on this. I was driving in rush hour traffic on the highway in NYC with 3 lanes of traffic going 65+ bumper to bumper when I got the beep, the red triangle, Stop Safely Now message, and the engine completely quit. There was no breakdown lane and me and my 2 children were nearly killed trying to get off the highway with absolutely no power, never mind that I still had 180 miles to drive to get home to MA. Luckily the jersey barriers blocking the breakdown lane opened up for about 100 ft so that I had some place to stop but it was treacherous! And this is a safety issue that appears to have been happening since 2005! The engine also completely shut down 4 times on a 2 mile stretch while driving to work in rush hour

1 traffic. That is what prompted me to get it to the dealer last week.
 2 My local mechanic would not work on it. He referred me to the
 3 dealership. (Edmunds, *Ford Escape Hybrid Engine Problems–*
 4 *Car Forums Edmunds* (accessed March 26, 2013),
[http://townhall-](http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/77#MSG77)
[talk.edmunds.com/direct/view/.f0ff5b5/77#MSG77](http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/77#MSG77))

5 f) Same problem with my 2007 Escape Hybrid, 55mph, boxed-in
 6 traffic, red kiss-of-death triangle, beeping, stop safely now (ha
 7 ha) message. Water pump diagnosis, \$750 for the part, \$150 for
 8 the "computer diagnosis", part has to be ordered. Someone is
 9 going to get hurt or killed by this defect! (Edmunds, *Ford Escape*
Hybrid Engine Problems– Car Forums Edmunds (accessed
 March 26, 2013), [http://townhall-](http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/90#MSG90)
[talk.edmunds.com/direct/view/.f0ff5b5/90#MSG90](http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/90#MSG90))

10 g) Tonight on the 405 freeway my 2008 Escape Hybrid with only
 11 28,000 miles had the red lights come on and started to come to a
 12 complete stop on the freeway. Crazy traffic, I barely made it to
 13 the side before my car just stopped on the freeway. Has this
 14 happened to you again? It was really scary. I almost got into a
 15 horrible accident. What did Ford say / do? (Edmunds, *Ford*
Escape Hybrid Engine Problems– Car Forums Edmunds
 (accessed March 26, 2013), [http://townhall-](http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/92#MSG92)
[talk.edmunds.com/direct/view/.f0ff5b5/92#MSG92](http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/92#MSG92))

16 h) As mentioned by a few posters before this one, our '07 Mariner
 17 Hybrid AWD (bought in '06) some times issues the message
 STOP SAFELY NOW !

18 It has occurred on road trips (not on everyday local driving) and
 19 usually when we have it loaded with cargo creating weight. I
 20 was thinking it be some kind of temperature(heat) problem with
 21 battery ventilation or, it might be something about the trans axel
 as described in post 101 & 102.

22 When it occurs we get off the highway ASAP because the
 23 darned thing is unresponsive to throttle! Scary!

24 I get out and sniff around the outside and underneath to see if
 25 there is any abnormality. Haven't seen, heard or smelled
 anything out of the ordinary on any of the 3 occasions it has
 happened.

26 We let the vehicle sit for 10-15 minutes. Then we start the
 27 puppy up and...off we go. Generally speaking, the message does
 28 not return and we stay below the speed limit and in the right
 hand lane just incase the loss of power happens again.

FWIW, The vehicle never has the problem just described when there are just 2 or 3 people and no cargo load. Since I know this much...duh... I don't want to fart around with our local Dealership's Service shop because they will probably say it is not unique to the hybrid 100,000 mile component warranty.

I'll just have live with it....because I ain't got much money (Edmunds, *Ford Escape Hybrid Engine Problems- Car Forums Edmunds* (accessed March 26, 2013), <http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/106#MSG106>)

i) <http://www.safercar.gov/>

WILL take your report - twice my car stopped in the middle of big-time LA traffic - frightening experience. Took it to dealer the first time in 2011, they said it was fine. Happened again a week ago and they said it was a coolant pump and charged me accordingly. This should be a recall issue but the recall only happens when the government steps it. So file complaints with the National Highway Agency - link is given above. PLEASE FILE. This should be recalled. (Edmunds, *Ford Escape Hybrid Engine Problems- Car Forums Edmunds* (accessed March 26, 2013), <http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/108#MSG108>)

j) I got the MECS and blend door actuator yesterday at the dealership for 1157. parts 496 and labler 680\$ for what had to be 2hour of having it and 1 hour of work based on dropping it off and when they called back.

TSB 08-24-5 states that some 2005-2008 Escape Hybrid and 2006-2008 Mariner Hybrid vehicles may exhibit a red triangle light and codes indicating a transaxle overtemp. This condition may result in reduced power as the system activates fail safe operation. Codes P1A0E, P1A0F, P0A3C, P0A3E, P0A7A, P0A7C and P1A0D may also be set(Edmunds, *Ford Escape Hybrid Engine Problems- Car Forums Edmunds* (accessed March 26, 2013), <http://townhall-talk.edmunds.com/direct/view/.f0ff5b5/113#MSG113>)

40. The Coolant Pump Defect poses an unreasonable safety risk for Class Members, as well as the drivers, passengers, and pedestrians sharing the road with Class Vehicles. A vehicle's ability to travel without sudden losses of acceleration is critical to a vehicle's safe operation. A defect that causes one or more of these negative characteristics poses a safety hazard to the general public,

1 and increases the risk of automobile accidents.

2 **Ford Had Exclusive Knowledge of the Coolant Pump Defect**

3 41. Ford had superior and exclusive knowledge of the Coolant Pump
4 Defect, and knew or should have known that the defect was not known or
5 reasonably discoverable by Plaintiff and Class Members before they purchased
6 or leased the Class Vehicles.

7 42. Plaintiff is informed and believes and based thereon alleges that
8 before Plaintiff purchased his Class Vehicle, and since at least 2005, Ford knew
9 about the Coolant Pump Defect through sources not available to consumers,
10 including pre-release testing data, early consumer complaints about the coolant
11 defects to Ford and its dealers including high warranty reimbursement rates and
12 repair orders, testing conducted in response to those complaints, high failure
13 rates and replacement part sales data, aggregate data from Ford dealers,
14 consumer complaints online reported by Ford customer care agents on internet
15 forums, among other internal sources of aggregate information about the
16 problem.

17 43. In a media press release, Ford stated Mr. Tom Watson, Ford's
18 Hybrid Electric Vehicle Propulsion System engineering manager, was
19 responsible for "Leading the Ford Motor Company powertrain team that
20 developed the first American hybrid."¹

21 44. In a 2006 interview regarding the use of a fleet of Ford Escape
22 Hybrids as taxis in New York and San Francisco, that same Mr. Watson stated
23 "Several water pumps blew at the 50,000 mile mark, a situation that has been
24 rectified."²

25
26 ¹ Ford Engineer Wins Magazine's Engineer of the Year Award For Hybrid
27 Work (June 19, 2013)
(http://media.ford.com/article_display.cfm?article_id=23427)

28 ² Hybrid Cabs Take a Licking ... But Their Meters Keep Ticking (June 19,
2013) http://media.ford.com/article_display.cfm?article_id=23083

1 45. However, in practice, the situation was not rectified. Numerous
2 consumers have experienced the Coolant Pump Defect and the subsequent safety
3 risks.

4 46. Contrary to Ford's public representations, many Class Members'
5 coolant pumps have failed recently, similar to Plaintiff's. As detailed above via
6 NHTSA and Edmunds complaints, scores of consumers online have reported
7 coolant pump failures. These failures are due to the Coolant Pump Defect.

8 47. Moreover, Ford has been aware of the Coolant Pump Defect since at
9 least 2005, when it issued Technical Service Bulletin 05-4-10, titled "Electric
10 Motor Temperature Indicator Lamp On – Possible DTCS P0A2F, P0A3C,
11 P0A3E, P0A7C. Ford described the issue as "Some 2005 Escape Hybrid
12 vehicles built between 8/2/2004 and 1/21/2005 may exhibit a red Electric Motor
13 Temperature lamp on, and/or diagnostic trouble codes (DTCs) P0A2F, P0A3C,
14 P0A3C, P0A3E, P0A7C. The vehicle may exhibit a loss of performance. *This
15 may be due to the motor electronics coolant pump (MECP) being inoperative.*"
16 (emphasis added). Ford clearly had knowledge of the Coolant Pump Defect
17 since at least 2005.

18 48. Further, Ford released their most current data relating to the Coolant
19 Pump Defect in November of 2008, when it issues its third Technical Service
20 Bulletin addressing the issue. In or around November 20, 2008, Ford issued
21 TSB 08-24-5, titled "OVERHEATING – ALL HYBRID APPLICATIONS." In
22 that TSB, Ford stated that "Some 2005-2008 Escape Hybrid and 2006-2008
23 Mariner Hybrid vehicles may exhibit a red triangle light and codes indicating a
24 transaxle overtemp. This condition may result in reduced power as the system
25 activates fail safe operation." The TSB then outlines instructions to the
26 authorized Ford mechanic to replace the MECS coolant pump with a non-
27 defective model.

28 49. The existence of the Coolant Pump Defect is a material fact that a

1 reasonable consumer would consider when deciding whether to purchase or lease
2 a vehicle that was equipped with the MECS coolant pump. Had Plaintiff and
3 other Class Members known that the Class Vehicles were equipped with
4 defective coolant pumps, they would not have purchased or leased the Class
5 Vehicles equipped with the MECS coolant pump or would have paid less for
6 them.

7 50. Reasonable consumers, like Plaintiff, reasonably expect that a
8 vehicle's coolant pump is safe, will function in a manner that will not pose a
9 safety hazard, and is free from defects. Plaintiff and Class Members further
10 reasonably expect that Ford will not sell or lease vehicles with known safety
11 defects, such as the Coolant Pump Defect, and will disclose any such defects
12 when it learns of them. They did not expect Ford to fail to disclose the Coolant
13 Pump Defect to them and to continually deny the defect.

14 **Ford Has Actively Concealed the Coolant Pump Defect**

15 51. While Ford has been fully aware of the Coolant Pump Defect in the
16 Class Vehicles, it actively concealed the existence and nature of the defect from
17 Plaintiff and Class Members at the time of purchase, lease or repair and
18 thereafter. Specifically, Ford failed to disclose or actively concealed at and after
19 the time of purchase, lease, or repair:

- 20 (a) any and all known material defects or material nonconformity
21 of the Class Vehicles, including the defects relating to the
22 MECS coolant pump;
- 23 (b) that the Class Vehicles, including their MECS coolant pump,
24 were not in good in working order, were defective, and were
25 not fit for their intended purposes; and
- 26 (c) that the Class Vehicles and their MECS coolant pump were
27 defective, despite the fact that Ford learned of such defects
28 through alarming failure rates, customer complaints, as well

1 as through other internal sources, as early as 2005.

2 52. As a result of the Coolant Pump Defect, Ford was inundated with
3 complaints. Since 2005, Ford has released no less than 3 different Technical
4 Service Bulletins relating to the MECS coolant pump. In 2005, Ford issued TSB
5 05-4-10 titled "ELECTRIC MOTOR TEMPERATURE INDICATOR LAMP
6 ON." Later, in 2008, Ford issued TSB 08-15-1, titled "OVERHEATING –
7 COMMERCIAL APPLICATIONS." In TSB 08-15-1 Ford stated that it
8 superseded TSB 05-4-10. In November of 2008, Ford issued TSB 08-24-5, titled
9 "OVERHEATING – ALL HYBRID APPLICATIONS." In TSB 08-24-5, Ford
10 stated that it superseded TSB 08-15-1. All three Technical Service Bulletins list
11 the Motor Electronics Coolant Pump as the potential cause of overheating and
12 call for its replacement.

13 53. Ford has caused Plaintiff and Class Members to expend money at its
14 dealerships to repair or replace the Class Vehicles Motor Electronic Coolant
15 Pump despite Ford's knowledge of the Coolant Pump Defect.

16 54. When consumers present the Class Vehicles to an authorized Ford
17 dealer for repair of the coolant pump, rather than repair the problem under
18 warranty, Ford dealers typically tell consumers they must pay for the repair.

19 55. To this day, Ford still has not notified Plaintiff and the Class
20 Members that the Class Vehicles suffer from a systemic defect that causes the
21 coolant system to malfunction.

22 56. Ford has caused Plaintiff and Class Members to expend money at its
23 dealerships to diagnose, repair or replace the Class Vehicles' coolant pump,
24 despite Ford's knowledge of the Coolant Pump Defect.

25 **TOLLING OF THE STAUTE OF LIMITATIONS**

26 57. Because the defects in the design and/or manufacturer of the Class
27 Vehicles and their coolant systems cannot be detected until manifestation,
28 Plaintiff and the Class Members were not reasonably able to discover the

1 problem until after purchasing or leasing the Class Vehicles, despite their
2 exercise of due diligence.

3 58. Plaintiff and the Class Members had no realistic ability to discern
4 that the coolant systems were defective until the coolant pump prematurely
5 failed, nor would Plaintiff and class members have reason to believe that
6 problems they encountered were caused by a widespread, systemic defect.
7 Therefore, the discovery rule is applicable to the claims asserted by Plaintiff and
8 the Class Members.

9 59. Plaintiff is informed and believes and based thereon alleges that
10 Ford has known of the Coolant Pump Defect since 2005, if not earlier, and has
11 concealed from or failed to alert owners and lessees of the Class Vehicles of the
12 defective nature of their coolant systems.

13 60. Any applicable statute of limitation has therefore been tolled by
14 Ford's knowledge, active concealment, and denial of the facts alleged herein.
15 Ford is further estopped from relying on any statute of limitation because of its
16 concealment of the defective nature of the Class Vehicles and their coolant
17 systems.

18 CLASS ACTION ALLEGATIONS

19 61. Plaintiff brings this lawsuit as a class action on behalf of herself and
20 all others similarly situated as members of the proposed Class pursuant to
21 Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the
22 numerosity, commonality, typicality, adequacy, predominance, and superiority
23 requirements of those provisions.

24 62. The Class and Sub-Class are defined as:

25 **Class:** All individuals in the United States who
26 purchased or leased any 2005 through 2008 Ford
27 Escape Hybrid or 2006 through 2008 Mercury Mariner
28 Hybrid vehicles.

California Sub-Class: All individuals who purchased
or leased any 2005 through 2008 Ford Escape Hybrid

1 or 2006 through 2008 Mercury Mariner Hybrid vehicles
2 in the State of California.

3 63. **CLRA Sub-Class:** All California Class Members who are
4 “consumers” within the meaning of California Civil Code § 1761(d) (“the CLRA
5 Sub-Class”). Excluded from the Class and Sub-Classes are: (1) Defendant, any
6 entity or division in which Defendant has a controlling interest, and their legal
7 representatives, officers, directors, assigns, and successors; (2) the Judge to
8 whom this case is assigned and the Judge’s staff; and (3) those persons who have
9 suffered personal injuries as a result of the facts alleged herein. Plaintiff reserves
10 the right to amend the Class and Sub-Class definitions if discovery and further
11 investigation reveal that the Class and Sub-Class should be expanded or
12 otherwise modified.

13 64. **Numerosity:** The Class here numbers in the tens of thousands,
14 making joinder impracticable. The disposition of the claims of these Class
15 Members in a single action will provide substantial benefits to all parties and to
16 the Court. The Class Members are readily identifiable from information and
17 records in Defendant’s possession, custody, or control, as well as from records
18 kept by the departments of motor vehicles of the various states.

19 65. **Typicality:** The claims of the representative Plaintiff are typical of
20 the claims of the Class in that the representative Plaintiff, like all Class
21 Members, purchased and leased a Class Vehicle designed, manufactured, and
22 distributed by Defendant and equipped with a defective coolant system. The
23 representative, like all Class Members, has been damaged by Defendant’s
24 misconduct in that he has incurred or will incur the cost of repairing or replacing
25 the defective coolant system. Furthermore, the factual bases of Defendant’s
26 misconduct are common to all Class Members and represent a common thread
27 resulting in injury to all Class Members.

28 66. **Commonality:** There are numerous questions of law and fact

1 common to Plaintiff and the Class that predominate over any question affecting
 2 only individual Class Members. These common legal and factual issues include
 3 the following:

- 4 (a) Whether the Class Vehicles contain defects relating to the
 5 coolant system;
- 6 (b) Whether the defects relating to the coolant system constitute
 7 an unreasonable safety risk;
- 8 (c) Whether Defendant knew about the defects relating to the
 9 coolant system and, if so, how long Defendant has known of
 10 the defect;
- 11 (d) Whether the defective nature of the coolant system constitutes
 12 a material fact;
- 13 (e) Whether Defendant's have a duty to disclose the defective
 14 nature of the coolant system to Plaintiff and Class Members;
- 15 (f) Whether Plaintiff and the other Class Members are entitled to
 16 equitable relief, including, but not limited to, a preliminary
 17 and/or permanent injunction;
- 18 (g) Whether Defendant should be declared financially responsible
 19 for notifying all Class Members of the problems with the
 20 Class Vehicles and for the costs and expenses of repairing and
 21 replacing the defective coolant systems;
- 22 (h) Whether Defendant is obligated to inform California Class
 23 Members of their right to seek reimbursement for having paid
 24 to diagnose, repair, and replace their defective coolant
 25 systems;
- 26 (i) Whether Defendant breached the implied warranty of
 27 merchantability pursuant to the Song-Beverly Act; and
- 28 67. Adequate Representation: Plaintiff will fairly and adequately

1 protect the interests of Class Members. Plaintiff has retained attorneys
2 experienced in the prosecution of class actions, including consumer and product
3 defect class actions, and Plaintiff intends to prosecute this action vigorously.

4 68. Superiority: Plaintiff and the Class Members have all suffered and
5 will continue to suffer harm and damages as a result of Defendant's unlawful and
6 wrongful conduct. A class action is superior to other available methods for the
7 fair and efficient adjudication of the controversy. Absent a class action, most
8 Class Members would likely find the cost of litigation their claims prohibitively
9 high and would therefore have no effective remedy at law. Because of the
10 relatively small size of individual Class Members' claims, it is likely that only a
11 few Class Members could afford to seek legal redress for Defendant's
12 misconduct. Absent a class action, Class Members will continue to incur
13 damages, and Defendant's misconduct will continue without remedy. Class
14 treatment of common questions of law and fact would also be a superior method
15 to multiple individual actions or piecemeal litigation in that class treatment will
16 conserve the resources of the courts and the litigants and will promote
17 consistency and efficiency of the adjudication.

18 69. In the alternative, the Class may be certified because:

- 19 (a) The prosecution of separate actions by the individual
20 members of the Class would create a risk of inconsistent or
21 varying adjudication with respect to individual Class
22 Members, which would establish incompatible standards of
23 conduct for Defendant;
- 24 (b) The prosecution of separate actions by individual Class
25 Members would create a risk of adjudications with respect to
26 them that would, as a practical matter, be dispositive of the
27 interests of other Class Members not parties to the
28 adjudications, or substantially impair or impede their ability

1 to protect their interests; and

2 (c) Defendant has acted or refused to act on grounds generally
3 applicable to the Class, thereby making appropriate final and
4 injunctive relief with respect to the members of the class as a
5 whole.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of California's Consumer Legal Remedies Act,** 8 **California Civil Code § 1750, *et seq.*)**

9 70. Plaintiff incorporates by reference the allegations contained in the
10 preceding paragraphs of this Complaint.

11 71. Plaintiff brings this cause of action on behalf of herself and on
12 behalf of the members of the CLRA Sub-Class.

13 72. Defendant is a "person" as defined by California Civil Code
14 § 1761(c).

15 73. Plaintiff and CLRA Sub-class Members are "consumers" within the
16 meaning of California Civil Code § 1761(d) because they purchased their Class
17 Vehicles primarily for personal, family or household use.

18 74. By failing to disclose and concealing the defective nature of the
19 coolant pumps from Plaintiff and prospective Class Members, Defendant
20 violated California Civil Code § 1770(a), as it represented that the Class
21 Vehicles and their coolant pumps had characteristics and benefits that they do
22 not have, and represented that the Class Vehicles and their coolant pumps were
23 of a particular standard, quality, or grade when they were of another. *See* Cal.
24 Civ. Code §§ 1770(a)(5) & (7).

25 75. Defendant's unfair and deceptive acts or practices occurred
26 repeatedly in Defendant's trade or business, were capable of deceiving a
27 substantial portion of the purchasing public, and imposed a serious safety risk on
28 the public.

1 76. Defendant knew that the Class Vehicles and their coolant pumps
2 suffered from an inherent defect, were defectively designed or manufactured, and
3 were not suitable for their intended use.

4 77. As a result of their reliance on Defendant's omissions and/or
5 misrepresentations, owners and/or lessees of the Class Vehicles suffered an
6 ascertainable loss of money, property, and/or value of their Class Vehicles.
7 Additionally, as a result of the Coolant Pump Defect, Plaintiff and the Class
8 Members were harmed and suffered actual damages in that the Class Vehicles'
9 coolant pumps are substantially certain to fail before their expected useful life
10 has run.

11 78. Defendant was under a duty to Plaintiff and the Class Members to
12 disclose the defective nature of the coolant pumps and/or the associated repair
13 costs because:

- 14 (a) Defendant was in a superior position to know the true state of
15 facts about the safety defect in the Class Vehicles' coolant
16 pumps;
17 (b) Plaintiff and the Class Members could not reasonably have
18 been expected to learn or discover that their coolant pumps
19 had a dangerous safety defect until it manifested; and
20 (c) Defendant knew that Plaintiff and the Class Members could
21 not reasonably have been expected to learn of or discover the
22 safety defect.

23 79. In failing to disclose the defective nature of the coolant pumps,
24 Defendant knowingly and intentionally concealed material facts and breached its
25 duty not to do so.

26 80. The facts Defendant concealed from or did not disclose to Plaintiff
27 and the Class Members are material in that a reasonable consumer would have
28 considered them to be important in deciding whether to purchase or lease the

1 Class Vehicles or pay less. Had Plaintiff and other Class Members known that
2 the Class Vehicles' coolant pumps were defective, they would not have
3 purchased or leased the Class Vehicles or would have paid less for them.

4 81. Plaintiff and the Class Members are reasonable consumers who do
5 not expect the coolant pumps installed in their vehicles to cause sudden loss of
6 forward propulsion, loss of vehicle control, slowed steering, and complete
7 automobile failure. This is the reasonable and objective consumer expectation
8 relating to vehicle coolant pumps

9 82. As a result of Defendant's conduct, Plaintiff and Class Members
10 were harmed and suffered actual damages in that the Class Vehicles experienced
11 and will continue to experience sudden losses of acceleration, inability to
12 maneuver the vehicle due to recessed speed and complete vehicle failure.

13 83. As a direct and proximate result of Defendant's unfair or deceptive
14 acts or practices, Plaintiff and Class Members suffered and will continue to
15 suffer actual damages.

16 84. Plaintiff and the Class are entitled to equitable relief.

17 85. Plaintiff provided Defendant with notice of its violations of the
18 CLRA pursuant to California Civil Code § 1782(a). If, within 30 days,
19 Defendant fails to provide appropriate relief for their violations of the CLRA,
20 Plaintiff will amend this Complaint to seek monetary, compensatory, and
21 punitive damages, in addition to the injunctive and equitable relief that he seeks
22 now.

23 SECOND CAUSE OF ACTION

24 Violation of California Business & Professions Code § 17200, *et seq.*

25 86. Plaintiff incorporates by reference the allegations contained in the
26 preceding paragraphs of this Complaint.

27 87. Plaintiff brings this cause of action on behalf of herself and on
28 behalf of all Class Members, and in the alternative on behalf of the California

1 Sub-Class.

2 88. As a result of their reliance on Defendant's omissions and/or
3 misrepresentations, owners and/or lessees of the Class Vehicles suffered an
4 ascertainable loss of money, property, and/or value of their Class Vehicles.
5 Additionally, as a result of the Coolant Pump Defect, Plaintiff and the Class
6 Members were harmed and suffered actual damages in that the Class Vehicles'
7 coolant pumps are substantially certain to fail before their expected useful life
8 has run.

9 89. California Business & Professions Code § 17200 prohibits acts of
10 "unfair competition," including any "unlawful, unfair or fraudulent business act
11 or practice" and "unfair, deceptive, untrue or misleading advertising."

12 90. Plaintiff and the Class Members are reasonable consumers who do
13 not expect their coolant pumps to cause sudden losses of acceleration, inability to
14 maneuver the vehicle due to recessed speed, slowed steering, and complete
15 automobile failure.

16 91. Defendant knew the Class Vehicles and their coolant pumps
17 suffered from inherent defects, were defectively designed or manufactured,
18 would fail prematurely, and were not suitable for their intended use.

19 92. In failing to disclose the defects with the coolant pump, Defendant
20 has knowingly and intentionally concealed material facts and breached its duty
21 not to do so.

22 93. Defendant was under a duty to Plaintiff and the Class Members to
23 disclose the defective nature of the Class Vehicles and their coolant pumps:

24 (a) Defendant was in a superior position to know the true state of
25 facts about the safety defect in the Class Vehicles' coolant
26 pumps;

27 (b) Defendant made partial disclosures about the quality of the
28 Class Vehicles without revealing the defective nature of the

1 Class Vehicles and their coolant pumps; and

2 (c) Defendant actively concealed the defective nature of the Class
3 Vehicles and their coolant pumps from Plaintiff and the Class.

4 94. The facts Defendant concealed from or failed to disclose to Plaintiff
5 and the Class Members are material in that a reasonable person would have
6 considered them to be important in deciding whether to purchase or lease Class
7 Vehicles. Had Plaintiff and other Class Members known that the Class Vehicles'
8 coolant pumps were defective and posed a safety hazard, then Plaintiff and the
9 other Class Members would not have purchased or leased Class Vehicles
10 equipped with coolant pumps, or would have paid less for them.

11 95. Defendant continued to conceal the defective nature of the Class
12 Vehicles and their coolant pumps even after Class Members began to report
13 problems. Indeed, Defendant continues to cover up and conceal the true nature
14 of the problem.

15 96. By its conduct, Defendant has engaged in unfair competition and
16 unfair business practices.

17 97. Defendant's unfair acts or practices occurred repeatedly in
18 Defendant's trade or business and were capable of deceiving a substantial
19 portion of the purchasing public.

20 98. In addition, as set forth herein, Defendant's acts and practices
21 alleged herein are unlawful because they violate California Civil Code §§ 1770
22 (a)(5), 1770 (a)(7), 1770 (a)(9), 1792, et seq., and 1795.90, et seq., and 15
23 U.S.C. § 2301, *et seq.*

24 99. Further, as set forth herein, Defendant's acts and practices alleged
25 herein are deceptive in that they were capable of misleading or deceiving, and in
26 fact did mislead and deceive, a substantial portion of the purchasing public.

27 100. As a direct and proximate result of Defendant's unfair, unlawful and
28 deceptive practices, Plaintiff and Class Members have suffered and will continue

1 to suffer actual damages.

2 101. Defendant has been unjustly enriched and should be required to
3 make restitution to Plaintiff and Class Members, pursuant to §§ 17203 and 17204
4 of the Business & Professions Code.

5 **THIRD CAUSE OF ACTION**

6 **(Breach of Implied Warranty Pursuant to Song-Beverly**
7 **Consumer Warranty Act, California Civil Code §§ 1792 and 1791.1, *et seq.*)**

8 102. Plaintiff incorporates by reference the allegations contained in the
9 preceding paragraphs of this Complaint.

10 103. Plaintiff brings this cause of action against Defendant on behalf of
11 herself and on behalf of the members of the California Sub-Class.

12 104. Defendant was at all relevant times the manufacturer, distributor,
13 warrantor, and/or seller of the Class Vehicles. Defendant knew or had reason to
14 know of the specific use for which the Class Vehicles were purchased or leased.

15 105. Defendant provided Plaintiff and Class Members with an implied
16 warranty that the Class Vehicles and their components and parts are
17 merchantable and fit for the ordinary purposes for which they were sold.
18 However, the Class Vehicles are not fit for their ordinary purpose of providing
19 reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles
20 and their coolant pumps suffered from an inherent defect at the time of sale and
21 thereafter are not fit for their particular purpose of providing safe and reliable
22 transportation.

23 106. Defendant impliedly warranted that the Class Vehicles were of
24 merchantable quality and fit for such use. This implied warranty included,
25 among other things: (i) a warranty that the Class Vehicles and their coolant
26 pumps were manufactured, supplied, distributed, and/or sold by Ford were safe
27 and reliable for providing transportation; and (ii) a warranty that the Class
28 Vehicles and their coolant pumps would be fit for their intended use while the

1 Class Vehicles were being operated.

2 107. Contrary to the applicable implied warranties, the Class Vehicles
3 and their coolant pumps at the time of sale and thereafter were not fit for their
4 ordinary and intended purpose of providing Plaintiff and the Class Members with
5 reliable, durable, and safe transportation. Instead, the Class Vehicles are
6 defective, including but not limited to the defective design and manufacture of
7 their coolant pumps.

8 108. As a result of Defendant's breach of the applicable implied
9 warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable
10 loss of money, property, and/or value of their Class Vehicles. Additionally, as a
11 result of the Coolant Pump Defect, Plaintiff and the Class Members were harmed
12 and suffered actual damages in that the Class Vehicles' coolant pumps are
13 substantially certain to fail before their expected useful life has run.

14 109. Defendant's actions, as complained of herein, breached the implied
15 warranty that the Class Vehicles were of merchantable quality and fit for such
16 use in violation of California Civil Code §§ 1792 and 1791.1.

17 **FOURTH CAUSE OF ACTION**

18 **(Breach of Implied Warranty Pursuant to Magnuson-Moss Warranty Act**
19 **Pursuant to 15 U.S.C. § 2301)**

20 110. Plaintiffs incorporate by reference each proceeding and succeeding
21 paragraph as applicable as though fully set forth at length herein.

22 111. Plaintiffs and the other Class members are "consumers" within the
23 meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

24 112. Defendant is a "supplier" and "warrantor" within the meaning of 15
25 U.S.C. § 2301(4)-(5).

26 113. The Class Vehicles are "consumer products" within the meaning of
27 15 U.S.C. § 2301(1).

28 114. Defendant impliedly warranted that the Class Vehicles were of

1 merchantable quality and fit for such use. This implied warranty included,
2 among other things: (i) a warranty that the Class Vehicles and their coolant
3 pumps were manufactured, supplied, distributed, and/or sold by Ford were safe
4 and reliable for providing transportation; and (ii) a warranty that the Class
5 Vehicles and their coolant systems would be fit for their intended use while the
6 Class Vehicles were being operated.

7 115. Contrary to the applicable implied warranties, the Class Vehicles
8 and their coolant pumps at the time of sale and thereafter were not fit for their
9 ordinary and intended purpose of providing Plaintiff and the Class Members with
10 reliable, durable, and safe transportation. Instead, the Class Vehicles are
11 defective, including but not limited to the defective design of their coolant
12 pumps.

13 116. The amount in controversy of the Plaintiffs' individual claims meets
14 or exceeds the sum or value of \$25. In addition, the amount in controversy
15 meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs)
16 computed on the basis of all claims to be determined in this suit.

17 117. Defendant has been afforded a reasonable opportunity to cure its
18 breach of implied warranty, including when Class Members brought their
19 vehicles in for diagnoses and repair of the battery system.

20 RELIEF REQUESTED

21 118. Plaintiff, on behalf of herself, and all others similarly situated,
22 requests the Court to enter judgment against Defendant, as follows:

- 23 (a) An order certifying the proposed Class and Sub-Classes,
24 designating Plaintiff as named representative of the Class, and
25 designating the undersigned as Class Counsel;
- 26 (b) A declaration that Defendant is financially responsible for
27 notifying all Class Members about the defective nature of the
28 coolant pump, including the need for period maintenance;

- (c) An order enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to Class Vehicles, and to remove and replace Plaintiff and Class Members' coolant pump with a suitable alternative product;
- (d) A declaration requiring Defendant to comply with the various provisions of the Song-Beverly Act alleged herein and to make all the required disclosures;
- (d) A declaration requiring Defendant to comply with the various provisions of the Magnuson-Moss Act alleged herein and to make all the required disclosures;
- (e) An award to Plaintiff and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial, except at this time Plaintiff does not pray for any monetary damages as a result of Defendant's violation of the California Consumer Legal Remedies Act;
- (f) Any and all remedies provided pursuant to the Song-Beverly Act, including California Civil Code section 1794;
- (g) A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles, or make full restitution to Plaintiff and Class Members;
- (h) An award of attorneys' fees and costs, as allowed by law;
- (i) An award of attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5;
- (j) An award of pre-judgment and post-judgment interest, as provided by law;
- (k) Leave to amend the Complaint to conform to the evidence produced at trial; and

(l) Such other relief as may be appropriate under the
circumstances.

DEMAND FOR JURY TRIAL

119. Pursuant to Federal Rule of Civil Procedure 38(b) and Central
District of California Local Rule 38-1, Plaintiff demands a trial by jury of any
and all issues in this action so triable.

Dated: June 28, 2013

Respectfully submitted,
Capstone Law APC

By: 

Jordan L. Darie
David L. Cheng
Tarek H. Zohdy
Cody R. Padgett

Attorneys for Plaintiff Jean MacDonald

EXHIBIT A

1 Jordan L. Lurie (SBN 130013)
2 Jordan.Lurie@capstonelawyers.com
3 David L. Cheng (SBN 240926)
4 David.Cheng@capstonelawyers.com
5 Capstone Law APC
6 1840 Century Park East, Suite 450
7 Los Angeles, California 90067
8 Telephone: (310) 556-4811
9 Facsimile: (310) 943-0396

10 Attorneys for Plaintiff
11 Jean MacDonald

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 JEAN MACDONALD, individually,
16 and on behalf of other members of
17 the general public similarly situated,

18 Plaintiff,

19 vs.

20 FORD MOTOR COMPANY,
21 Defendant.

Case No:

**DECLARATION OF JEAN
MACDONALD IN SUPPORT OF
PLAINTIFF'S SELECTION OF
VENUE FOR TRIAL OF CLAIMS
ARISING UNDER THE
CALIFORNIA CONSUMER LEGAL
REMEDIES ACT**

[Cal. Civ. Code, § 1780, subd. (d)]

DECLARATION OF JEAN MACDONALD

I, JEAN MACDONALD, declare under penalty of perjury as follows:

1. I make this declaration based upon my personal knowledge except as to those matters stated herein that are based upon information and belief, which I believe to be true. Unless the context indicates otherwise, I have personal knowledge of the facts stated in this Declaration and if called as a witness, I could and would competently testify thereto. I am Plaintiff Jean MacDonald in the above-captioned matter.

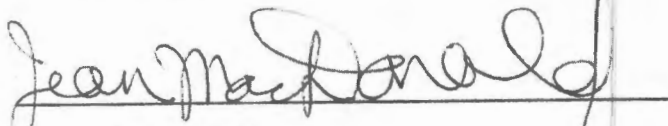
2. Pursuant to California Civil Code section 1780(d), this Declaration is submitted in support of Plaintiff's Selection of Venue for the Trial of Plaintiff's Cause of Action alleging violation of California's Consumer Legal Remedies Act.

3. I purchased my 2007 Ford Escape Hybrid, which is the vehicle at issue in this action, in March of 2007, in Walnut Creek, California.

4. On information and belief, Defendant Ford Motor Company is a corporation organized and in existence under the laws of the State of Delaware, and registered with the California Department of Corporations to conduct business in California. Defendant is engaged in the business of designing, manufacturing, constructing, assembling, marketing, distributing, or selling automobiles and other motor vehicles and motor vehicle components throughout the United States of America, including Antioch, California.

5. Based on the facts set forth herein, this Court is a proper venue for the prosecution of Plaintiff's Cause of Action alleging violation of California's Consumer Legal Remedies Act because Defendant conducts business activities in the Northern District of California, including, but not limited to marketing, distributing and/or selling Class Vehicles to Class Members. In addition, the transaction at issue, or a substantial portion thereof, occurred in the Northern District of California.

1 I declare under penalty of perjury under the laws of the United States of
2 America and the State of California that the forgoing is true and correct. Executed
3 this 27th day of June, 2013 in Antioch, California.

4 
5
6 Jean MacDonald